American Citizenship and the Japanese

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FOR some time past those interested in American-Japanese relations have been turning their attention to the question of the eligibility of the Japanese to become American citizens through naturalization. We have extended this privilege to the German, the Englishman, the Frenchman, the Italian, the Negro, the Russian, and others; why not to the Japanese? Has not the Japanese shown himself capable of assuming the obligations of American citizenship? Can he not fit in with our democratic scheme of government? The answers to these questions are both negative and affirmative.

The eligibility of alien Japanese to become American citizens is a part of the larger question of citizenship by naturalization. Political science usually recognizes two general sources of citizenship—namely, birth or descent, and the formal grant or conferment by the state. It is the latter with which we are here concerned.

When the Federal Constitution was adopted the national government took over the whole problem of naturalizing aliens. It would have been folly to have allowed each state to determine its own naturalization laws, so among the powers granted to Congress was that of establishing "an uniform rule of naturalization."

In accordance with this provision Congress has passed a number of laws. The first act was approved March 26, 1790.[1] In the first section it is provided that "any alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for a term of two years may be admitted to become a citizen."

[1] U. S. Statutes at Large I, 103.

The phrase "free white person" was used in all of our naturalization laws down to 1870, when the law was changed to meet the conditions arising out of the Civil War and reconstruction. The law of 1870 reads: "The naturalization laws are hereby extended to aliens of African nativity and to persons of African descent."[2]

By an oversight, apparently, the phrase "free white person" was omitted from the law, so in 1875 it was again amended. As amended it reads: "The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent."[3] There has been no change in this feature of the naturalization laws since 1875.

The question has often been raised: Did not Congress by "extending" the naturalization laws to aliens of African nativity and to persons of African descent thereby remove all race discrimination from our naturalization laws? It is quite obvious that there was no Asiatic problem in the United States at the time the first law was passed in 1790 and for seventy years thereafter.

A perusal of the federal censuses from 1790 to 1860 indicates that there was no such problem. Beginning with the census of 1790 the classification of races is as follows:

CENSUS	CLASSIFICATION
1790	Free White, All Other Free, Slaves.
1800	Free White, Slaves, All Other Free, Except Indians Not Taxed.
1810	Free White, Slaves, All Other Free Persons Except Indians not Taxed.

[2] U. S. Statutes at Large 16,256.

[3] U. S. Revised Statutes Title XXX, Section 2,169.

1820 Whites, Slaves, Free Colors.

1830 Free White Persons, Slaves, Free Colored Persons.

1840 Free White Persons, Slaves, Free Colored Persons.

1850 Whites, Free Colored, Slaves.

1860 On page 39 of this census report, on the classification of races, we read:

> Another feature worthy of notice is the large number of Asiatics that have arrived in California, subjects of the Celestial Empire, attracted to the land of gold. Table No. 4, page 33, in giving statistics for California, which is entitled *Free Population, Native and Foreign*, by Counties, 33,149 male and 1,784 female Asiatics are included in the white population.

1870

> Here the basis for the schedule is, White, Colored, Chinese, Indian. There is a note at the bottom to indicate that the Japanese are included under Chinese.

1880

> White, Colored, Chinese, Indians. A note at the bottom of page 378, table 5, indicates that the Japanese are included in the Chinese.

It is obvious, then, that down to 1860 or 1870 very little thought was given to the question of just what races were included in the term "white persons," but as soon as the Asiatic problem became acute on the Pacific Coast, Congress was urged to pass a law not only restricting Oriental immigration but also denying citizenship to Chinese. Section 14, of the Chinese restriction act of 1882 provides: "That hereafter no State Court or Court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed." Previous to the enactment of this law a very considerable number of Chinese were naturalized, the naturalization courts apparently including them in "white persons."

A popular opinion has prevailed for some time that by the laws referred to above the Japanese, along with the Chinese, have been excluded from citizenship through naturalization. On the contrary, there is no specific federal statute denying them this privilege. Where we have refused to grant them papers of citizenship it has been done by the courts in their interpretation of the term "white persons" as found in our laws.

Just what races are included within the term "white persons" has been a question with the courts for some time past. A variety of interpretations have come from our tribunals. Thus in 1893 in the case of *Saito* vs. *United States*[1] the Circuit Court of the United States for the District of Massachusetts laid down the theory that the Japanese do not come within the meaning of the term "white persons" as used in our naturalization laws. Shebato Saito, a native of Japan, applied for naturalization papers and his application was denied by the court upon the following grounds: "The act," held the court, "relating to naturalization declares that the provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and persons of African descent. The Japanese, like the Chinese, belong to the Mongolian race and the question presented is whether they are included within the term 'white persons.' The court rules that the statute must be taken in its ordinary sense, and that the application of Shebato Saito must be denied upon the ground that he was of the Mongolian race and that the term 'white person' excluded the Mongolian race, and therefore the application is denied." The same ruling has been applied touching the Burmese. Thus in the case of Sanco Po,[2] a native of British Burmah, the court held that the Burmese are Malays, and under

[1] 62 Federal Reports, 126.

[2] 38 New York Supplement, 383.

modern ethnological subdivisions, are Mongolians. "The petitioner," continues the court, "falls squarely within the provisions of Section 2169 U. S. Revised Statutes which limit naturalization to free white persons and to persons of African nativity and African descent, for he is neither."

In those cases dealing with the Japanese the courts have taken the position that the term "white persons" does not include the Japanese.[1]

On the other hand, a number of Japanese, as formerly in the case of Chinese, have been admitted to American citizenship by the courts. A notable case was that of the distinguished international lawyer, author and editor, Misuji Miyakawa, who died in this country in 1916. Mr. Miyakawa was the chief counsel for the Japanese in the famous school controversy in California in 1906. Others have been admitted in California, Indiana, Florida and New York. It is estimated that some fifty or a hundred, or perhaps more, Japanese were naturalized before the Bureau of Immigration and Naturalization issued more strict orders touching the naturalization of aliens. These orders were issued in 1911 and were to the effect that clerks of courts should not receive declarations of intention or file petitions for naturalization from aliens other than white persons, and persons of African nativity or African descent.

By implication this excluded the Japanese, and the courts since 1911 have refused to naturalize them, with the exception of a few Japanese naturalized by the courts because of their service in the military and naval forces of the United States in the late war.

In spite of the fact that the Japanese can not become American citizens by naturalization, all children born of Japanese parents residing here permanently are American citizens by the "law of the soil." The reports of the California State Board of Health show that between 1906 and 1919, inclusive, there were born in the state (the problem here being more acute than in other states) 29,529 Japanese children. From figures developed by the State Board of Control, which constituted Governor Stephens' investigating committee, from the total registration of minors made by the State Superintendent of Public Instruction as required by the act of the 1919 Legislature, the minor population of Orientals in the state on November 1, 1919, was 21,611. The fact that many Japanese children born in the United States were absent in Japan, and also the fact that a rather high mortality prevailed among them in this country, taken together, would account somewhat for the discrepancy in the figures as furnished by the State Board of Health and the State Superintendent of Public Instruction.

These children are American citizens by virtue of being born upon American soil. The situation presents some very

[1] A perusal of the following cases will reveal the great lack of uniformity in determining the meaning and scope of our naturalization laws. *In re* Ah Yup (1878) 5 Sawyer 155, excluding Mongolians; *in re* Camille (1880), 6 Fed. 256, excluding a half-breed Indian and white; *in re* Gee Wop (1875, 71 Fed. 274), excluding a Chinese; *in re* Rodriquez (1897) 81 Fed. 337, admitting a native of Mexico; *in re* Kumagai (1908) 163 Fed. 922, excluding a Japanese; *in re* Knight (1909) 171 Fed. 299, excluding a half-breed Mongolian and white; *in re* Najour (1909) 174 Fed. 735, admitting a Syrian; *in re* Helladjian (1909) 174 Fed. 834, admitting an Armenian; *in re* U. S. vs. Dolla (1910) 177 Fed. R. 101, admitting a Hindu; *in re* U. S. vs. Balsara (1910) 180 Fed. 694, admitting a Parsee; *in re* Young (1912) 198 Fed. 715, excluding a half-breed German and Japanese; *in re* Alverto (1912) 198 Fed. 688, excluding a quarter-breed Spaniard and Filipino; *in re ex parte* Shadid (1913) 205 Fed. 812, excluding a Syrian; *in re* Mozumdar (1913) 207 Fed. 115, admitting a Hindu of the Brahman Caste; *in re* Burton (1900) 1 Alaska 111, excluding an Indian.

interesting anomalies. These sons and daughters being American citizens have all the civil and political privileges which the rest of us Americans enjoy. One very interesting and complicated case has come to the attention of the writer. A young Japanese lady, an American citizen by birth, and a graduate of a California university, married a native of Japan. Under our federal laws she lost her American citizenship, and, under the provisions of the California constitution that voters must be United States citizens, the privilege of voting in this state. There was born to this couple some three or four years ago a little daughter. This child is an American citizen. Under our present laws the parents must remain aliens. The mother, formerly an American citizen, is now an alien; the child is a citizen, and the father an alien—rather an anomalous case.

Some of the pertinent questions growing out of this situation are these: What will be the relation of the rising generation of Japanese-American citizens to their alien parents? What will be the attitude of Americans toward this increasing number of American citizens of Japanese blood? And this number will continue to increase, as it is in California increasing today at the rate of 4,000 a year, as long as adult alien Japanese are allowed to immigrate. This situation is unique in the history of citizenship in the United States, namely, an increasing number of aliens ineligible to citizenship, at the same time an increasing number of American citizens, the offspring of these aliens. This presents a knotty problem to the sociologist and to the practical statesman.

The Japanese boys and girls born in this country are to a large extent being educated in our American schools and the testimony of many teachers is that they are, on the whole, as bright and quick to learn as the average American boy or girl. The complaint comes from many quarters that these boys and girls are crowding into our schools in such numbers that they are driving out white children. On the other hand, it is argued that this is one sure way not only of Americanizing the children themselves but also to some extent of bringing their alien parents in contact with American ideals and principles.

It might be added that there is a movement on foot among those who call themselves the "exclusionists," to have the Fourteenth Amendment to the Federal Constitution so changed that children born in the United States of alien parents, who themselves are ineligible to citizenship by naturalization, would not be considered as American citizens. This raises another interesting question, namely: Through how many generations would this remain effective?

Another interesting feature of the problem of American citizenship for Japanese is the practice of Japan with regard to children of her citizens born abroad. The report of the California State Board of Control, alluded to above, points out the following:

> Every Japanese, wherever born, is a citizen of Japan unless expatriated. Every Japanese in the United States, whether American-born or not, is a citizen of Japan and as such is subject to military duty to Japan from the age of seventeen years until forty years of age, unless expatriated. The American-born Japanese holds dual citizenship; first, allegiance to Japan with compulsory military duty; and second, rights of citizenship in America. Under such circumstances, a Japanese, though born in America and thereby acquiring all the rights and privileges of an American citizen, owes his first obligation of allegiance and military service to Japan. It is contended by writers on international law that because our country is cognizant of this dual citizen-

ship with its requirement of compulsory military service to Japan, the United States, in event of war with Japan, could not demand military service from the American-born Japanese but would be obliged to permit them to return to Japan, there to render military service in behalf of Japan. American-born Japanese would appear to be enjoying all the advantages of American citizenship without assuming the most important responsibilities of such citizenship.

Once a Japanese always a Japanese, unless each individual Japanese renounced allegiance in the manner prescribed by the Civil Code of Japan and his renunciation is accepted by the Japanese Government. No matter how many successive generations of American-born Japanese there may be, none of the children born in America are relieved of allegiance to Japan unless the parent has renounced allegiance to Japan *and had his renunciation accepted by the Japanese Government.*

While some of these points might be questioned, an important principle is touched upon in connection with the expatriation of the Japanese. On this point the report quotes from a letter of Dr. Charles E. Martin, Lecturer on International Law, University of California, dated March 25, 1920:

About 1917 or 1918, the Japanese enacted a law of expatriation by which the status of dual nationality on the part of Japanese residing here and claiming citizenship under the Fourteenth Amendment could be brought to an end. Japanese who are native citizens of the United States may expatriate themselves in two ways:

(1) Before the age of 15 through a legal representative:

(2) Between the ages of 15 and 17 years, but never after the age of 17, unless he has presented himself for military duty.

As compared with the practice of the United States, the Japanese law is limited in its scope. Japan will relinquish her jurisdiction over foreign-born Japanese, not through the voluntary act of the individual but only through the permission of the home government. Many countries hold to the view that expatriation is the voluntary right of the individual. Japan does not recognize this principle. The burden is placed upon foreign-born Americans to prove that they have retained their American citizenship, while the burden is placed upon foreign-born Japanese to prove that they have renounced their Japanese citizenship through means provided by, and with the permission of, the Japanese government. In this way, the home government has a rigid military hold on its foreign-born citizens.

In the Pacific Coast states the Japanese problem is becoming an increasingly serious one. No one state, or group of states, can hope to offer a sane solution for the problem because of the many international factors involved in the situation. The whole question must be handled by the states in coöperation with the federal government. In this direction only lies the hope for a constructive program.

The Japanese Question

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THE peace of the Pacific can not be maintained by a mutual policy of recrimination and discrimination among the Powers bordering upon it. These Powers are at present represented by Japan in the East and by the United States in the West. The present attitude of fault-finding of each towards the other is fraught with danger, though it may not lead to an armed conflict.

[1] Author of: *Political Ideas of Modern Japan* (1903), *American-Japanese Relations* (1912), *Asia at the Door* (1914), *Japan in World Politics* (1917), *Japan and World Peace* (1919). Also in Japanese *History of Germany, Modern Socialism, Labor Question, Industrial Education.*—The EDITOR.